

## § 550.360

judgment, if you meet one of the following conditions:

(i) The transaction is authorized by applicable law.

(ii) Legal counsel advises you in writing that you have incurred, in your fiduciary capacity, a contingent or potential liability. Upon the sale or transfer of assets, you must reimburse the fiduciary account in cash in an amount equal to the greater of book or market value of the assets.

(iii) The transaction is permitted under 12 CFR 9.18(b)(8)(iii) for defaulted fixed-income investments.

(iv) The OTS requires you to do so.

(2) *Funds held as trustee.* You may make loans of funds held in trust to any of your directors, officers, or employees if the funds are held in an employee benefit plan and the loan is made in accordance with the exemptions found at section 408 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1108).

### **§ 550.360 May I make a loan to a fiduciary account that is secured by an interest in the assets of the account?**

You may make a loan to a fiduciary account that is secured by an interest in the assets of the account, if the transaction is fair to the account and is not prohibited by applicable law.

### **§ 550.370 May I sell assets or lend money between fiduciary accounts?**

You may sell assets or lend money between fiduciary accounts, if the transaction is fair to both accounts and is not prohibited by applicable law.

#### COMPENSATION, GIFTS, AND BEQUESTS

### **§ 550.380 May I earn compensation for acting in a fiduciary capacity?**

If the amount of your compensation for acting in a fiduciary capacity is not set or governed by applicable law, you may charge a reasonable fee for your services.

### **§ 550.390 May my officer or employee retain compensation for acting as a co-fiduciary?**

You may not permit your officers or employees to retain any compensation for acting as a co-fiduciary with you in the administration of a fiduciary ac-

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count, except with the specific approval of your board of directors.

### **§ 550.400 May my fiduciary officer or employee accept a gift or bequest?**

You may not permit any fiduciary officer or employee to accept a bequest or gift of fiduciary assets, unless the bequest or gift is directed or made by a relative of the officer or employee or is specifically approved by your board of directors.

#### RECORDKEEPING REQUIREMENTS

### **§ 550.410 What records must I keep?**

You must keep adequate records for all fiduciary accounts. For example, you must keep documents on the establishment and termination of each fiduciary account.

### **§ 550.420 How long must I keep these records?**

You must keep fiduciary records for three years after the termination of the account or the termination of any litigation relating to the account, whichever is later.

### **§ 550.430 Must I keep fiduciary records separate and distinct from other records?**

You must keep fiduciary records separate and distinct from your other records.

#### AUDIT REQUIREMENTS

### **§ 550.440 When do I have to audit my fiduciary activities?**

(a) *Annual Audit.* If you do not use a continuous audit system described in paragraph (b) of this section, then you must arrange for a suitable audit of all significant fiduciary activities at least once during each calendar year.

(b) *Continuous audit.* Instead of an annual audit, you may adopt a continuous audit system. Under a continuous audit system, you must arrange for a discrete audit of each significant fiduciary activity (*i.e.*, on an activity-by-activity basis) at an interval commensurate with the nature and risk of that activity. Some fiduciary activities may receive audits at intervals greater or less than one year, as appropriate.